

ORIGINATING MOTION.

S. C. MacIntyre for the applicant.

W. H. Sault for the respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Paul Storr, J. : — At the hearing of this Originating Motion, Mr. Sault, who appeared for the respondent, raised two preliminary points: (1) that the affidavit of Ramaswami Pillai ((2) in file) in support of the Motion did not of itself disclose a cause of action in that he only deposed "to the best of my knowledge" as to there being no demand from the occupation agent and not within his knowledge and therefore the affidavit did not comply with O. 10 r. 4(i), Civil Procedure Rules, Johore, as this was a final matter and not an interlocutory one, and (2) that the affidavit filed of M. Balasubramanian Pillai ((12) in file) should not be read for 2 reasons (a) that it was not sworn in conformity with O. 10 r. 6(ii) which, as India did not now come within O. 10 r. 6(i), it should have been, and (b) that the jurat did not conform with O. 10 r. 12(i) and therefore O. 10 r. 13 applied.

Mr. MacIntyre appeared for the applicant and in answer to Mr. Sault's first objection stated that the words "to the best of my knowledge" were not "to the best of my knowledge, information and belief" and therefore were tantamount to saying "within my knowledge". As to the second objection he submitted that the affidavit was not filed in support of the Motion, and as to the jurat he was unable to say how the status of India at the present time fitted in with the Orders and Rules.

It was agreed by both Counsel that when giving my judgment I should consider such affidavits as I hold to be rightly before the Court and decide the case accordingly. Further it was agreed that the correct figure mentioned in the Motion should be \$3,783 and not \$5,009.65.

For convenience I will take the second point raised by Mr. Sault first, i.e. as to whether the jurat of the affidavit of M. Balasubramanian Pillai complied with the Civil Procedure Rules applicable to the State of Johore. I hold that:—

- (1) O. 10 r. 12 has not been complied with and therefore, under O. 10 r. 13, the affidavit cannot be used in evidence;
- (2) O. 10 r. 10 has not been complied with, as no place is stated as to where the affidavit was sworn; and

- (3) The wording of O. 10 r. 6(i) and (ii) does not cover the present status of India.

Under O. 10 r. 18 the Court is given a wide discretion in the matter of receiving affidavits which do not conform strictly with the Rules, but in view of the defects in the affidavit under consideration I am not prepared to exercise my discretion and allow it to be used in evidence even if, which I doubt, r. 18 overrides the mandatory provisions of r. 13.

As to the first point raised by Mr. Sault, I have come to the conclusion that the words "to the best of my knowledge" when referred to the acts of another person must mean "to the best of my knowledge, information and belief" and that what is deposed to is not within the knowledge of the deponent and therefore, without such statement as is contained in para 6 of the affidavit of Ramaswami Pillai ((2) in the file), the Motion shows no cause of action and must be dismissed.

However, if my interpretation of the words "to the best of my knowledge" is wrong, then on the affidavits before me, i.e. the affidavits of Ramaswami Pillai ((2) in the file), the respondent, and Tee Pau ((9) and (10) in the file), I have come to the conclusion that the probabilities and weight of evidence are in favour of the respondent and that, therefore, on that ground alone I would dismiss the Motion.

The Motion is dismissed with costs.

Motion dismissed.

SIM AH SONG & ANOR. v. REX.

[App. Crim. Juris. (Brown, Ag. C.J.) July 25, 1951]

[Singapore — Magistrate's Appeal No. 60 of 1951]

Common Gaming Houses Ordinance (Cap. 30) s. 9
— *Public Lottery — Chap Ji Ki lottery — Presumption*
— *Expert evidence.*

In this case the appellants were convicted under Section 4(c) of the Common Gaming House Ordinance of assisting in carrying on a public lottery. The evidence was that in the course of a Police raid a third accused person was arrested with 50 slips of paper in her hand. These had writing on them, and were put in evidence. She was arrested on a staircase leading to the first floor. And in a room on the first floor the two appellants were found seated at a table with pencils in their hands. On the table in front of them were four pieces of paper. Each document was divided into 144 squares, and in each square several numbers were written in pencil. A fifth piece of paper was also on the table. It too was divided into squares containing Chinese characters and symbols.

The question was whether any of the abovesaid documents included "account, memorandum or record of stakes or wagers in or relating to a lottery", so as to raise the presumption contained in section 9 of the

Ordinance. Upon this question the prosecution called as an expert witness a Police officer from the Gambling Suppression Branch, who stated that he had had three years experience as an assistant to a Chap Ji Ki promoter.

Held, that where expert evidence is given to 'explain' the nature of a document, the expert should 'explain' its contents by 'explaining' the technical and unintelligible terms contained in it; and (2) that the responsibility for the determination of every question upon which expert evidence is called, rested upon the Court and not upon the expert.

Rex v. Soh Eng Chiang⁽¹⁾ followed.

Case referred to:—

(1) Rex v. Soh Eng Chiang (1937) M.L.J. 247.

MAGISTRATE'S APPEAL.

K. K. Bezboruah for the appellants.

E. F. Shanks (Crown Counsel) for the Crown.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Brown, Ag. C.J.:—The two appellants were convicted under section 4(c) of the Common Gaming Houses Ordinance of assisting in carrying on a public lottery. The evidence was that in the course of a Police raid a third accused person was arrested with 50 slips of paper in her hand. These had writing on them, and were put in evidence as Exhibit P. 3. She was arrested on a staircase leading to the first floor. And in a room on the first floor the two appellants were found seated at a table with pencils in their hands. On the table in front of them were four pieces of paper. Each document was divided into 144 squares, and in each square several numbers were written in pencil. A fifth piece of paper was also on the table. It too was divided into squares containing Chinese characters and symbols. These five documents were put in evidence collectively as Exhibit P. 4.

The question was whether Exhibit P. 4 included any "account, memorandum or record of stakes or wagers in or relating to a lottery", so as to raise the presumption contained in section 9 of the Ordinance. Upon this question the prosecution called as an expert witness a Police officer from the Gambling Suppression Branch, who stated that he had had three years experience as an assistant to a Chap Ji Ki promoter.

It was conceded by Mr. Bezboruah on behalf of the appellants that this witness was properly called under sections 49 and 99 of the Evidence Ordinance. But Mr. Bezboruah contended that the effect of this witness's evidence upon the material question, viz. whether the documents contained an account or record of stakes of a lottery, amounted to no more than an

expression of his expert opinion, which the learned Magistrate accepted as conclusive.

The responsibility for the determination of this question, as in the case of every question upon which expert evidence is called, rested upon the Court and not upon the expert. The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court.

In this case the witness, after stating his qualifications to be regarded as an expert, explained how a Chap Ji Ki lottery is operated. He said that the public could choose two numbers out of the first 12 numbers, which are used twice giving 144 chances. He explained that the person making a stake writes out the two numbers of his choice and the amount of his stake on a slip of paper called a staking slip. He then passes his staking slip (with the stake money) to the collector, who compiles a schedule or record slip from the staking slips which he receives and sends the schedule to the promoter. The witness then said: "Exhibit P. 3 consists of 50 staking slips value \$171.18. Exhibit P. 4 consists of four schedules and an all record slip." And in cross-examination he said: "the record slip is written in Chinese characters and symbols denoting the value of the currency used i.e. 10 cents, \$1, etc." It would undoubtedly have been better if the expert witness, instead of making the two flat statements "Exhibit P. 3 consists of 50 staking slips. Exhibit P. 4 consists of 4 schedules and an all record slip", had explained the purport of the squares and the numbers in the light of the explanation which he had previously given of the role which the staking slips and the schedules play in the operation of a Chap Ji Ki lottery. In the case of the all record slip he did explain (in cross-examination) that the symbols denoted the value of the currency used. And in the case of the staking slips (Exhibit P. 3) he explained (also in cross-examination), though not very clearly, what the writing on them meant. Thus his evidence was more

than a bare expression of his opinion, and the learned Magistrate who had the documents in front of him, after hearing the witness describe how a staking slip is made out by the staker and how a schedule is compiled by the collector from the staking slips, was "satisfied from the evidence of P.W. 3 that the documents found in possession of the appellants related to a Chap Ji Ki lottery".

I find it impossible to distinguish this case from the decision of this Court in *Rex v. Soh Eng Chiang*⁽¹⁾. Indeed this case appears to be stronger because from the report of that case it would appear that the only exhibit was a schedule of stakes. In this case the learned Magistrate had before him :—

(1) an explanation that in the operation of a Chap Ji Ki lottery it is the business of the collector to compile a schedule from the staking slips which he receives;

(2) 4 documents each containing 144 squares, which the witness, having explained that there were 144 chances, said were schedules;

(3) 50 slips of paper (exhibit P. 3) with writing on them, which were found on the third accused, which the witness said were staking slips.

Thus the learned Magistrate, from his own examination of the documents in Exhibit P. 4, was in a position to see that they appeared to be schedules compiled from staking slips in the manner which had been described, and this opinion was confirmed by the expert. This is very different from accepting the bare opinion of an expert without understanding the reasons which have led him to form his opinion.

The appeal must be dismissed.

Appeal dismissed.

BANK OF CHINA v. LAM TAI CHENG & 2 ORS.

[Orig. Civ. Juris. (Spenser-Wilkinson, J.) July 27, 1951]

[Singapore — Suit No. 299 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, 1949 s. 4 sub-ss. (1) and (2) — Burden of proof — "Duress or Coercion".

In this case the Bank of China, the plaintiffs in this suit sought to recover from the defendants the balance of a prewar overdraft with interest thereon. Various payments to account of this overdraft were made during the Japanese Occupation in occupation currency by the defendants to the Japanese Liquidator of the Bank concluding with the payment of \$11,445.91 in purported payment of the balance then outstanding.

At the trial the Counsel for the plaintiff submitted that as the payments were admitted in the pleadings the onus was on the defendants and they should therefore begin. The Counsel for the defendants accepted this position and opened his case.

Held, that the plaintiffs in order to succeed under section 4(2)(c) must satisfy the Court that the payment was not caused by "duress or coercion" and in this case the plaintiffs have not discharged the onus of satisfying the Court that there was no duress or coercion.

Case referred to :—

- (1) *Abdul Hameed Mohamed Ibrahim & Co. v. A. M. S. Nainam Sahib & Co* (1951) M.L.J. 103; 2 M.L.R. 71.

CIVIL SUIT.

C. F. J. Ess for the plaintiffs.

Dr. C. H. Withers-Payne for the defendants.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Spenser-Wilkinson, J. : — In this case the Bank of China seeks to recover from the defendants the balance of a prewar overdraft with interest thereon. Various payments to account of this overdraft were made during the Japanese Occupation in Occupation Currency by the defendants to the Japanese Liquidator of the Bank concluding with a payment of \$11,445.91 in purported payment of the balance then outstanding. The issue between the parties is whether or not these payments are or are not to be revalued in accordance with the provisions of the Debtor and Creditor (Occupation Period) Ordinance 1949. If there is no revaluation then the debt has been discharged and the plaintiffs' claim must fail; if, however, the payments are revalued, there will be a substantial balance recoverable by the plaintiffs.

Before the war the three defendants were partners carrying on the business of a pawnshop called the Thye Ann Pawnshop at 297 South Bridge Road. Some of the defendants were also partners in a provision and liquor business called Chop Foh Mee in New Bridge Road. On the entry of the Japanese into Singapore in February 1942 the Thye Ann Pawnshop was closed down. Soon afterwards, however, the Japanese sent for the partners and told them to reopen their business. On the 30th of June 1942, after obtaining permission from the appropriate Japanese authorities, the pawnshop went into liquidation. The shop was closed and from then until November the debts of the firm were gradually paid off with the exception of the overdraft to the Bank of China.

The Bank of China, in company with many other Banks, was declared by the Japanese to be an Enemy Bank and a Liquidation Officer was appointed. Some time in March 1943 the Liquidation Officer began to collect moneys due to the Bank and an arrangement